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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 04-54015 jrg
THE AUTO AMBULANCE TOW SERVICE, INC.,
Debtor.
_____/

THE AUTO AMBULANCE TOW SERVICE, INC., Adversary No. 04-5276
Plaintiff,
vs.
THE CITY OF SAN JOSE,
Defendant.

ORDER STAYING ADVERSARY PROCEEDING

I. INTRODUCTION

The debtor filed this adversary proceeding seeking injunctive and declaratory relief against the City of San Jose based on the City's denial of a tow-car permit. In addition, the debtor seeks damages under Bankruptcy Code § 362(h) for the City's purported violation of the automatic stay.

The debtor seeks a preliminary injunction to enjoin the City from

1 completing the administrative process regarding the denial of the
2 debtor's application for a tow truck permit. The debtor contends that
3 the City's municipal codes regulating tow trucks are preempted by both
4 federal and state law and are unconstitutional. For the reasons
5 stated herein, the court will stay the debtor's adversary proceeding
6 on the basis of Younger abstention.

7 **II. BACKGROUND**

8 In March 2004, the debtor applied to the City for a permit to
9 conduct towing activities within the City. On June 10, 2004, the City
10 denied the tow-car permit. The City had concluded that false
11 representations were made, forged documents presented, and that the
12 debtor had allowed an individual who was subject to a preliminary
13 injunction preventing the conduct of tow activities, to conduct such
14 activities on behalf of the debtor. The debtor timely filed an appeal
15 of the denial of the permit on June 18, 2004. The debtor's appellate
16 hearing was scheduled for August 26, 2004.

17 However, the debtor filed a Chapter 11 bankruptcy petition on
18 June 25, 2004. The debtor notified the City of the bankruptcy filing
19 and insisted the City not proceed with the appeal due to the automatic
20 stay. In addition, the debtor filed this adversary proceeding on
21 August 10, 2004. Nevertheless, the City proceeded with the appeal and
22 at the hearing on the appeal, denial of the permit was upheld.

23 The court has considered the City's separate motion filed in the
24 bankruptcy case for relief from stay. After considering the arguments
25 this court determined that the City's actions in enforcement of its
26 permit requirements was excepted from the automatic stay. In
27 addition, the court granted the City relief to the extent necessary
28 to proceed with enforcement of the permit process.

1 **III. DISCUSSION**

2 The debtor seeks a preliminary injunction under § 105 to enjoin
3 the City of San Jose:

- 4 (1) from contacting the signatories to the executory contracts
5 for private property towing which had been approved by the
6 city prior to June 10, 2004; and
7 (2) from taking any civil, administrative or regulatory action
8 against the Debtor pending trial of this matter.

9 This court has decided that a more appropriate question to
10 consider is whether it should abstain and stay this adversary
11 proceeding under Younger v. Harris, 401 U.S. 37 (1971). The court
12 issued an order on October 29, 2004, giving the parties an opportunity
13 to respond to this question. Only the City responded by the deadline
14 set forth in the October 29 order.

15 After considering the posture of the case and the administrative
16 process still pending with the City, the court will not reach the
17 merits of the debtor's motion for a preliminary injunction and instead
18 stay the debtor's adversary proceeding under Younger abstention
19 principles.

19 **A. The Basics of Younger.**

20 Younger abstention extends to noncriminal proceedings.
21 Gilbertson v. Albright, 381 F.3d 965, 968 (9th Cir. 2004) (en banc)
22 (discussing Middlesex County Ethics Comm. v. Garden State Bar Ass'n,
23 457 U.S. 423 (1982)). In Gilbertson, the Ninth Circuit discussed at
24 length the evolution of Younger principles. Younger's primary concern
25 is the principle of comity, which preserves respect for state
26 functions such that protection of federal rights and interests should
27 not unduly interfere with the legitimate activities of the States.
28 Id. at 970-71 (citing Younger, 401 U.S. at 43-45).

1 The Supreme Court has framed the Younger issue as three
2 questions:

- 3 (1) Do the type of state hearings at issue constitute an
4 ongoing state judicial proceeding;
- 5 (2) Do the proceedings implicate important state interests; and
- 6 (3) Is there an adequate opportunity in the state proceedings
7 to raise constitutional challenges?

7 Id. at 973 (discussing Middlesex, 457 U.S. at 432).

8 **1. Debtor's Appeal Of City's Denial Of Tow-Car Permit**
9 **Initiated State Judicial Proceedings.**

10 Here there were ongoing state proceedings at the time this
11 adversary proceeding was filed.¹ Prior to filing bankruptcy, the
12 debtor had timely filed an appeal of the City's denial of the permit.
13 The debtor's appellate hearing was scheduled for August 26, 2004 and
14 went forward on that date. The debtor filed this adversary proceeding
15 on August 10, 2004.

16 In addition, at the hearing on the appeal, the denial was upheld.
17 The City points out that under Calif. Code of Civil Procedure
18 § 1094.5, the debtor may seek further review by filing an application
19 for an administrative writ with the superior court. Until the
20 appellate process for the permit runs its course, the City's denial
21 of the permit is not final. See City of San Jose Municipal Code
22 § 6.66.200.

23 **2. City's Tow-Car Permit Proceedings Implicate Important**
24 **State Interests.**

25 As discussed in the Court's prior order regarding the City's
26 motion for relief from stay, the Supreme Court has concluded that 49

27 ¹The critical date for purposes of deciding whether abstention principles apply is
28 the date the federal action is filed. Gilbertson v. Albright, 381 F.3d 965, 969 n.4 (9th Cir.
2004).

1 U.S.C. § 14501(c) does not bar a state from delegating to
2 municipalities and other local units the State's authority to
3 establish safety regulations governing motor carriers of property,
4 including tow trucks. City of Columbus v. Ours Garage & Wrecker
5 Serv., Inc., 536 U.S. 424, 428 (2002).

6 As discussed in the case of Hott v. City of San Jose, 92
7 F.Supp.2d 996, 999 (N.D. Cal. 2000), the requirements imposed on the
8 tow truck business by San Jose require business owners to provide
9 proof of liability insurance and relevant criminal history. Other
10 subsections of the San Jose Municipal Code set forth requirements for
11 the displaying of information, reporting and record keeping. "San
12 Jose Municipal Code § 6.66.060 has a permit[] procedure that requires
13 a prospective towing-company owner to file an application including
14 general information regarding the name and address of the owner." Id.

15 In addition § 6.66.060 also requires proof of good moral
16 character on the part of the applicant. The grounds for denial of
17 a permit set for in Municipal Code § 6.66.180 relate to safety
18 concerns. Tow companies are entrusted with the vehicles of citizens
19 and issues concerning insurance, prior crimes, and dishonest or
20 fraudulent behavior are relevant to the safety of the general public.
21 These permit requirements are for the purpose of regulating safety
22 concerns and are authorized by the California Vehicle Code. Id. at
23 1000. Thus, an important State interest is at issue over the issuance
24 of tow-car permits.

25 **3. The Debtor Has An Adequate Opportunity In State Court**
26 **Proceedings To Raise Constitutional Challenges.**

27 The City points out that the debtor will have an opportunity to
28 raise its federal preemption and constitutional issues in the state

1 court by way of the administrative appeal process pursuant to Calif.
2 Code of Civil Procedure § 1094.5. In addition, in the absence of
3 unambiguous authority to the contrary, state courts are presumed
4 adequate to raise federal questions. Woodfeathers, Inc. v. Washington
5 County, OR., 180 F.3d 1017, 1020 (9th Cir. 1999). The debtor has not
6 presented any unambiguous authority that the permit appeal process
7 denies it the opportunity to raise the federal preemption and
8 constitutional issues raised in the complaint.

9 Thus, it appears the three parts of Younger abstention are
10 satisfied.

11 **B. The Debtor's Assertion Of A Violation Of The Automatic Stay**
12 **Under § 362(h) Requires The Court To Stay The Adversary**
Proceeding Until Completion Of The State Court Proceeding.

13 The Ninth Circuit recently concluded that federal courts should
14 not dismiss actions where damages are at issue; rather, damages
15 actions should be stayed until the state proceedings are completed.
16 Gilbertson v. Albright, 381 F.3d at 968 (dealing with a damages claim
17 brought under § 1983 for violation of constitutional rights). The
18 court reasoned:

19 [W]hen damages are sought and Younger principles apply, it makes
20 sense for the federal court to refrain from exercising
21 jurisdiction *temporarily* by staying its hand until such time as
22 the state proceeding is no longer pending. This allows the
23 federal plaintiff an opportunity to pursue constitutional
24 challenges in the state proceeding ... and the state an
25 opportunity to pass on those constitutional issues in the
context of its own procedures, while still preserving the
federal plaintiff's opportunity to pursue compensation in the
forum of his [or her] choice. In this way, neither the federal
plaintiff's right to seek damages for constitutional violations
nor the state's interest in its own system is frustrated.

26 Id. at 981 (footnote omitted).

27 In this case, the debtor has brought a claim for damages under
28 Bankruptcy Code § 362(h) for the City's purported violation of the

1 automatic stay. While this is a remedy provided by the bankruptcy
2 code, the debtor's claim of a stay violation is related to the
3 debtor's federal and state preemption arguments. However, the
4 § 362(h) claim is most likely moot in light of this court's order on
5 the City's motion for relief from stay. Thus, the court sees no harm
6 in staying the action until the state proceeding is no longer pending.
7 At that time, the viability of the debtor's adversary proceeding can
8 be addressed.

9 **IV. CONCLUSION**

10 For the reason discussed above, the court declines to address the
11 merits of the debtor's motion for a preliminary injunction. Instead,
12 the court determines that Younger abstention principles apply to the
13 debtor's adversary proceeding. Because the debtor seeks damages under
14 § 362(h), the court stays further proceedings on the debtor's
15 adversary until the permit appeal process becomes final.

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17 DATED: _____
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19 _____
20 JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE
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1 **Adversary Proceeding No. 04-5276**

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6 **UNITED STATES BANKRUPTCY COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

8 **CERTIFICATE OF MAILING**

9 I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the
10 Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San
Jose, California hereby certify:

11 That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's
12 **ORDER STAYING ADVERSARY PROCEEDING** by depositing it in the United States Mail, First
Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed
13 as listed below.

14 I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct.

15 Executed on _____ at San Jose, California.

16
17 _____
18 LISA OLSEN

19
20 Office of the U.S. Trustee
U.S. Courthouse/Federal Bldg.
21 280 S. First St., Rm. 268
San Jose, CA 95113

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